

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte
JEROME MELVIN KLOSOWSKI,
CHARLES WAYNE SMITH
and DONNY LEON HAMILTON

MAILED

JUL 22 2003

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Appeal No. 2002-0223
Application No. 09/410,162

ON BRIEF

Before KIMLIN, OWENS and LIEBERMAN, Administrative Patent Judges.

LIEBERMAN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the decision of the examiner refusing to allow claims 51, 54 and 55. Claims 52, 53 and 56 through 71 stand withdrawn from consideration pursuant to a requirement for restriction. These are all the

claims pending in this application.

THE INVENTION

The invention is directed to a method of preserving a material by impregnating the material with at least one hydrolyzable silane and curing the product obtained therefrom.

Additional limitations are described in the following illustrative claims.

THE CLAIMS

Claims 51, 54 and 55 are illustrative of appellants' invention and are reproduced below.

51. A method of preserving organic and inorganic materials, the method comprising:

(I) Impregnating a material selected from

- a. organic materials or
- b. inorganic materials

with a hydrolyzable silane or a mixture of hydrolyzable silanes and thereafter, curing the product of (I).

54. A method as claimed in claim 51 wherein the hydrolyzable silane is an acetoxysilane.

55. A method as claimed in claim 54 wherein the acetoxysilane is methyltriacetoxysilane.

THE REFERENCES OF RECORD

As evidence of obviousness, the examiner relies upon the following references:

Pinchuk 5,736,251 Apr. 7, 1998

Leidheiser, H. et al., (Leidheiser) Corrosion Behavior of Steel Pre-treated with Silanes,
Corrosion, (June 1987 43(6) pp. 382-387.

THE REJECTIONS

Claims 51, 54 and 55 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Pinchuk.

Claim 51, 54 and 55 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Leidheiser.

OPINION

We have carefully considered all of the arguments advanced by the appellants and the examiner and agree with the examiner that the rejection of the claims under §103(a) over Pinchuk is well founded. Accordingly, we affirm the rejection for the reasons discussed herein. We will not however sustain the rejection over Leidheiser.

As an initial matter, it is the appellants' position that, "[t]he claims may be grouped together for the purposes of this appeal." See Brief, page 2. Accordingly, we select claim 51 as representative of the claimed subject matter and substantially limit our consideration thereto. See 37 CFR §1.192(c)(7) (2000).

The Rejection under § 103(a)

It is the appellants' position that, "[n]owhere in the disclosure of the '251 patent do the patentees suggest or contemplate impregnating the articles of their invention." See Brief, page 3. We disagree.

Pinchuk is directed to a highly crosslinked silane treatment for reducing the coefficient of friction of a surface. See column 1, lines 10-16 and column 2, lines 43-47. The surface being treated is located on a shaped elastomeric article. See column 3, lines 56-67. We find that the silanes may be applied to the surface by any suitable application means. See column 3, lines 18-23. We find that the silanes are crosslinkable and the invention includes the presence of a crosslinking agent. See column 4, lines 16-33 and 66-67. We further find that the silanes form a crosslinked silicone surface modification as well as, "a crosslinked interpenetrating network within the substrate." See column 5, lines 1-8. Significantly, we find that Example 7 is directed to a urethral valve catheter equipped with a silicon balloon and vapor phase treated with methyl triacetoxysilane which is the preferred silane of claim 55. The balloon portion was cured at 150° C. Pinchuk states that, "[w]hen the balloon portion was cut open, micro nodules of silane surface treatment were observed on the interior surface of the balloon which was not directly contacted with the silane vapors. From this observation, it was concluded that the silane treatment of the invention penetrated the bulk of the balloon catheter substrate and was not only a surface coating." See Example 7, column 11, lines 8-21. Emphasis ours.

Impregnate is defined as "2 a : to cause to be filled, imbued, mixed, furnished, saturated (as with particles of another substance). . . . b (1) to mix with :

INTERPENETRATE.”¹

Inasmuch as the silane treatment penetrated throughout the elastomer and mixed with the elastomer, we conclude that the elastomeric material was “impregnated” as required by the claimed subject matter. We further conclude that, inasmuch as the silane utilized by Pinchuk in Example 7 is the preferred silane of claim 55, the organic material would be inherently “preserved” as required by the claimed subject matter. Stated otherwise, “preserving” the material would be an inherent property inasmuch as the method and material utilized are the same.

Based upon the above findings and analysis, we conclude that the examiner has established a prima facie case of obviousness with respect to the claimed subject matter, this being the sole issue before us for consideration with respect to the rejection over Pinchuk.

As for the second rejection, Leidheiser teaches the protection of an inorganic material, i.e., steel, with polymerized methyl triacetoxysilane. See Answer, page 4. There is no suggestion or teaching however, in Leidheiser that the polymerized triacetoxysilane impregnates the steel as required by the claimed subject matter. In support of her position, the examiner cites *In re Marra* 329 F.2d 970, 972, 141 USPQ 221, 223 (CCPA 1964) stating that, “the art does not recognize any distinction between coating and impregnating.” *Id.*

¹ Webster's Third New International Dictionary, p. 1136 (G. & C. Merriam Co., 1971). Copy attached.

The pertinent portion of the decision reads as follows;

We have difficulty accepting the distinction urged by appellants that 'coating' differs from 'impregnating' in this case. It would appear that a porous material like paper would be impregnated to some extent by an aqueous composition applied by 'various coating techniques' as Keim et al. suggests, whether the composition is called 'coating' or 'impregnating.' It seems doubtful that a clearly defined interface between the coating and the paper would result.

On the facts before us in this case, we have difficulty in accepting coating and impregnation of steel as being art recognized equivalents, steel being a non-porous material. We conclude that a non-porous material, such as steel, would be coated but not impregnated, by applying methyl triacetoxysilane. Any reaction with the steel would at most be limited to a surface reaction between the silane and the substrate in the absence of impregnation. Accordingly, the rejection of the claims over Leidheiser is not sustainable.

DECISION

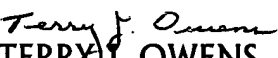
The rejection of claims 51, 54 and 55 is affirmed.

The decision of the examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED


EDWARD C. KIMLIN
Administrative Patent Judge


TERRY J. OWENS
Administrative Patent Judge


PAUL LIEBERMAN
Administrative Patent Judge

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MIDLAND, MI 48686-0994

importuner *vb* *ED-ING-/-s* [MF *importuner*, *modif.* (influenced by *poser* to put, place) of *L* *importare* to put upon, impose, deceive, cheat, *fr.* *importer* to put upon, place more at *POSE*, *POSITION* *vi* 1 *obs*: CHARGE, IMPUTE 2: to impose or bestow (as a name or title) authoritatively or officially 3 *a* *obs*: to cause to be burdened; SUBJECT — used with to *b* (1): to make, frame, or apply (as a charge, tax, obligation, rule, penalty) as compulsory, obligatory, or enforceable by international law — *Encyc. Americana* *LEVI* (a tax on all unmarried men) *INFLECT* (a punishment upon a traitor) (flying ~ a heavy net) strain on the individual — H.G. Armstrong: force one to submit to or come into accord with — *usu.* used with *on* or *upon* (moved the newspapers to ~ a uniformity upon the written language — Oscar Handlin) (restraints upon the children) (2) to establish forcibly (he imposed himself as leader) (3) law and order on the primitive people (imposed a uniform organization over the whole of Lowland Britain — L.D. Stamp) (3) to make to prevail as a basic pattern, order, or quality (neoclassic style) — *Am. Guide Series: Minn.* (as blessing or confirmation) *b* *archaic*: SET, SIASTICAL RITE, PUT, DEPOSIT *c* (1) to arrange (type or plated pages) on an imposing stone preparatory to locking up in a chase; sometimes to arrange and lock up (pages) (2) to arrange (the component parts of a nonletterpress printing surface) in a similar manner 5 *a*: to force into the company or upon the attention of another (he imposed upon the company) to inflict deception or fraud: pass off ~ fake documents upon a gullible public (so long as imaginary events are not imposed upon the reader as historical evidence — J.L. Clifford) *vi* to take to use, unwarranted advantage of something (I was imposed to go by my friend's party and I would not wish to ~ by going uninvited) *syn* see *DICTATE* — *impose on or impose upon* 1 *a*: to force oneself esp. obnoxiously on (others) *b* *obs*: to encroach or infringe on: INFRINGE 2: to take unwarranted advantage of: exploit a personal relationship with (got a reputation for imposing on friends for their time and money) *abuse* (did not attempt to impose on: DECEIVE, DEFAUD, CHEAT (an attempt to impose on the good-natured tolerance of the public — Roger Fry) (succeeded in deceiving, and imposing upon, others — George Meredith)

imposed load *n*: the part of the total load sustained by a structure or member thereof that is applied to it after erection — compare *DEAD LOAD*

impos-er *\-zə(r)\ n*: one that imposes; *esp*: STONEMAN 1 *imposing* *adj* 1 *archaic*: insistent and exacting 2 *archaic*: DECEPTIVE, TREACHEROUS 3: impressive because of size, scope, bearing, dignity, or grandeur: COMMANDING (an ~ building) (an ~ appearance) *syn* see *IMPOSE*

impos-ing-ly *adv*: in an imposing manner; *esp*: IMPRESSIVELY **impos-ing-ness** *n*: the quality or state of being imposing **imposing stone** or **imposing table** or **imposing surface** *n*: a slab of stone or metal on which matter to be printed is imposed

im-po-si-tion *\im-pə-zishən\ n* [ME *imposicioun*, *fr.* MF & LL: MF *impositio*, *fr.* L *impositio*, *impositio*, *fr.* L *impositus* (past part. of *imponere*) + *-ion*, *-io* *1*: the act of imposing: as *a*: the laying on of the hands as a religious ceremony (as in ordination or confirmation) *b*: a putting, placing, or laying on (the ~ of color on the clear wood) (the ~ of a second layer on the first) *c*: an applying by compelling means (the ~ of rigid censorship) (the ~ of a foreign form on a domestic product) *d*: a levying or assessment (as of a tax or a fine) (the ~ of extra charges for extra services) (the ~ of a high tariff) *e*: the arranging on an imposing stone of matter to be printed 2: something imposed: as *a*: LEVY, TAX (an ~ of 5000 francs on a coat) *b* *obs*: COMMAND, CHARGE *c*: an excessive, unwarranted, or uncalculated-for requirement or burden (severe ~ on her children — John Dollard) *d*: an exercise imposed on pupils: the ment on a student (as at an English public school) 3: the act of imposing upon another (the ~ of the condition of being imposed upon: DECEPTION (know that their tricks are ~ W.W. Howells) 4: the order of arrangement of imposed pages or other matter (the standard ~s are simple multiples of 6 pages — Plan for a Good Book)

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im-possible *\im-pə-sə-bəl\ adj* [ME, *fr.* MF & L: MF, *fr.* L *impossibilis*, *fr.* L *impossibilis* possible — more at *POS-SIBLE* 1: incapable of being or of occurring: not within the realm of the possible: contrary to the nature of reality (an ~ motion) (an ~ creature) *b* (1): felt to be incapable of being done, attained, or fulfilled: felt to be utterly impracticable (a land ~ of conquest) (2): extremely and almost insuperably difficult under the circumstances: having little likelihood of accomplishment or completion (spent his time indefinitely doing ~ tasks for the committee) *c*: of a statement: SELF-CONTRADICTION 2: a: out of the question: UNACCEPTABLE (an ~ coloring in a picture) (an ~ political candidate) *b*: extremely undesirable (relieving ~ and unfair economic conditions — F.D. Roosevelt) (his claret was ~ — Elinor Wylie) *c*: marked by very undesirable qualities (his wife is simply ~ ... uses perfumery, and has an awful voice — Margaret Deland) *d*: difficult or extremely awkward to deal with or so markedly odd as to be unpleasant or objectionable (a positive genius for collecting ~ people — Ngaio

per, or wall) from which an arch springs — see *ARCH* illustration **impos-ter** *\im-pə-stər\ n* [MF & L: MF *impostor*, *fr.* L *impostor*, *fr.* L *impostus*, *impostus* (past part. of *imponere* to put upon, impose, deceive, cheat) + *-or* — more at *IMPOSE*]: one that practices imposture: one that assumes an identity, character, or title not his own for the purpose of deception: PRETENDER, FRAUD, HUMBUG **im-pos-tro-us** *\im-pə-strə-s\ adj*: of, relating to, or being an imposture: DECEITFUL, FRAUDULENT **impostume** *\im-pə-stūm\ n* [MF *apostume*, *fr.* L *apostoma* — more at *APOSTOME*] 1 *archaic*: ABSCESS, CYST 2 *archaic*: an instance or source of moral corruption **imposture** *\im-pə-stʃər\ n* [ME *imposture*, *fr.* *impostura*, *fr.* L *impostura*, *fr.* L *impostura* (past part. of *imponere* to put upon, impose, deceive, cheat) + *-ura* *ure* *1*: the act of imposing: 1: the act of imposing on or deceiving someone by means of an assumed character or name: the act or conduct of an impostor (careful not to detect cases of malingering ... and thus placed a premium on ~ — G.E. Fussell) 2: an instance of imposture (admitted under oath that the whole instance of insanity was an ~ and a sham — B.N. Cardozo) *syn* CHEAT, FRAUD, DECEIT, DECEPTION, COUNTERFEIT, SHAM, FAKE, HUMBUG, SIMULACRUM: IMPOSTURE applies to any situation in which a spurious object or action is passed off as genuine and bona fide (its values ... are an imposture, pretending to honor and distinction ... CHEAT applies to any vulgar and base — Edmund Wilson) *cheat* applies to any abuse of credence and faith by misleading or tricky and also to delusion induced by the victim's credulity (though the countess allowed the cheat for fact ... and let the tale of the feigned birth pass for true — Robert Browning) (the cheat which still leads us to work and live for appearances — R.W. Emerson) *fraud* is likely to indicate a calculated perversion of the truth; applied to a person it may be less condemnatory and suggest pretence and hypocrisy (many persons persisted in believing that his supposed suicide was but another fraud — Justin McCarthy) (the pious fraud who freely indulges in the sins against which he eloquently preaches — Oliver LaFarge) *deceit* indicates anything that deceives or misleads, *usu.* purposeful and is strongly condemnatory (Indians were ... treacherous according to the white man's standards, since they held that the basest trickery or deceit was not dishonorable if directed against a foe — *Am. Guide Series: R.I.*) *deception* is often interchangeable with *deceit* but is used without condemnation in reference to sleights and feints and to innocent or natural characteristics likely to mislead (practice gross deception on the public with all the earnestness of a moral crusade — S. Davis) (a fast backfield trained in deception) *COUNTERFEIT* refers to a close imitation or copy of a thing, *usu.* one made or circulated for dishonest gain (this bill, *counterfeit*); in reference to persons or ideas, *counterfeits* it suggests spurious although close imitation (a married woman and a housemistress but only a kind *counterfeit* — Arnold Bennett) *SHAM* is severe in censuring what fraudulently imitates or purports to be a genuine reality (perhaps her devotion to Marcellus was a *sham* and her real intention was that Agrippa should be goaded into putting him out of the way — Robert Graves) (if people would only build on facts, not on *shams* — Ellen Glasgow) *FAKE* refers to something factitious or assumed with plausible closeness to the original, genuine, or true; it may or may not condemn, depending on culpable intent to deceive (Gaston B. Means's volume, *The Strange Death of President Harding*, ... bears every imprint of being a thoroughgoing *fake* — S.H. Adams) (he pretends everything is what it is not, he is a *fake* — Katherine A. Porter) *HUMBUG* indicates elaborate pretense, esp. so flagrant that it approaches transparency (you're a *humbug*, sir ... will speak plainer, if you wish it. An impostor, sir — Charles Dickens) (these liars won't no kings nor dukes, at all, but just low-down *humbugs* and frauds — Mark Twain) *SIMULACRUM* indicates an image or imitation but *usu.* lacks the suggestion that it is made to deceive; it may indicate an image utterly wanting in essential substance or reality (nothing but a coat and a wig and a mask smiling below it — nothing but a great *simulacrum* — W.M. Thackeray) (something whose essence was not there at all, a stiff lifeless *simulacrum* — J.C. Powys)

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